

Fundamentals of Evictions

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Rev 08.30.16

Learning Objectives

- This course will assist new clerks in dealing with Eviction cases basics from filing through disposition.
- The student will be able to:
 1. Understand how to process Eviction cases and procedural requirements at filing;
 2. Identify and properly compute the timing requirements;
 3. Describe the procedural requirements at default hearings and at contested trials;
 4. Properly process appeals, including pauper's affidavits;
 5. Ensure that citations and judgments comply with all legal requirements

Justice Court Case Types

- Small Claims cases -- most civil law suits
- Debt Claims cases – financial institutions and assignees suing for debt
- Repair and Remedy cases -- where a landlord needs to repair a dwelling
- **Evictions cases** – when a landlord seeks to recover possession of real property

TRCP Rule 510.1

Application

- Rule 510 applies to (an Eviction) lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code.

TRCP Rule 510.3(a)- Petition Contents

•In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and **must** contain:

- (1) a description, including the address, if any, of the premises that the plaintiff seeks possession of
- (2) a description of the facts and the grounds for eviction
- (3) a description of when and how notice to vacate was delivered
- (4) the total amount of rent due and unpaid at the time of filing, if any; and
- (5) a statement that attorney fees are being sought, if applicable

TRCP Rule 510.3(b)

Petition – Where Filed

- The petition **must** be filed in the *precinct* where the premises is located.
- If it is filed elsewhere, the judge **must** dismiss the case.
- The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

TRCP Rule 510.3(c)

Petition – Defendants Named

- If the eviction is based on a written residential lease, the plaintiff **must** name **all tenants** on the lease whom they seek to evict.
- No judgment or writ of possession may issue or be executed against a tenant who is not named in the petition and served with citation.
 - This means multiple service fees for multiple defendants

TRCP Rule 510.3(d)

Petition – Claim for Rent

- A claim for rent within the justice court's jurisdiction **may** be asserted in an eviction case.

“Jurisdiction” is the court’s authority to hear and decide a case. TRCP 500.2(o)

TRCP Rule 510.3(e)

Petition – Only Issue

- Right to actual possession and not title
- No Counterclaims or joinder of suits against third parties
- A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction (might be Justice Court)

Computation of Time

Setting Trial Date & Issuing Citation

TRCP Rule 500.5

Computation of Time (General Rules)

- (1) Exclude the day of the event that triggers the period (Date Filed is day zero);
- (2) Count every day, including Saturdays, Sundays, and legal holidays; and
- (3) include the last day of the period, but....

TRCP Rule 500.5

Computation of Time - Timely Filing (General)

- (A) if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday; and
- (B) If the last day for filing falls on a day during which the court is closed before 5:00 p.m., the time period is extended to the court's next business day

TRCP Rule 510.2

Computation Of Time For Evictions

- The general rules (Rule 500.5) apply BUT.....
- If a document is filed by mail and not received by the court by the due date, the court **may** take any action authorized by these rules, including issuing a writ of possession.
- So may be moved out by a writ of possession before the appeal arrives in the office

TRCP Rule 500.5

Computation of Time - Timely Filing (General)

- (b) **Timely Filing by Mail.** Any document required to be filed by a given date is considered timely filed if:
 1. deposited in the U.S. mail on or before that date, and
 2. received within 10 days of the due date.
 3. A legible postmark affixed by the United States Postal Service is evidence of the date of mailing.

TRCP Rule 510.4(a)

Issuance of Citation - Contents

- When a petition is filed, the court **must immediately** issue citation directed to each defendant. The citation must:
 - (2) be signed by the clerk under seal of court or by the judge
 - (7) state the plaintiffs cause of action and relief sought;
 - (10) state the date of the trial (**not be less than 10 days nor more than 21 days after the petition is filed**)

TRCP Rule 510.4(a)

Issuance of Citation - Contents

- (11) state that if the defendant fails to appear for trial, default may be issued
- (12) state that the defendant can request a jury **no later than 3 days before the day set for trial**
- (14) include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

TRCP Rule 510.4(b)

Service and Return of Citation

•(1) **Who May Serve:**

- Citation **must** be served by a *sheriff or constable*, unless otherwise authorized by written court order.

TRCP Rule 510.4(b)

Service and Return of Citation

•(2) **Method of Service:**

- Must deliver a copy with a copy of the petition attached *to the defendant*,
- or by leaving a copy with a copy of the petition attached with some person, **other than the plaintiff**, over the age of 16 years, at the defendant's usual place of residence, **at least 6 days before the day set for trial.**

TRCP Rule 510.4(b)
Service and Return of Citation

•(3) Return of Service:

•At least **one day** before the day set for trial, the constable or sheriff **must** complete and file a return of service in accordance with Rule 501.3 with the court that issued the citation.

Eviction Citation Sample

Case No. _____

Plaintiff: _____
 Defendant: _____

County: _____
 City: _____

EVICTON CITATION

TO ANY PERSON, FURNISHING TO ANY PERSON, OR RECEIVING BY MAIL,
 Before the citation is returned to the court.

TO THE DEFENDANT: _____

THE COURT ORDERS: Plaintiff is entitled to possession of the premises, and the defendant is to be evicted from the premises. The defendant is to be evicted from the premises on or before _____.

Failure to comply with this citation may result in the defendant being held in contempt of court. The defendant may file a motion to set aside this citation or a motion to stay this citation. The defendant may also file a motion to set aside this citation or a motion to stay this citation. The defendant may also file a motion to set aside this citation or a motion to stay this citation.

**FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A
 DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.**

BY: _____
 Constable

FILED TO BE Served BY MAIL OR DELIVERED BY HAND.

A RETURN OF SERVICE MUST BE FILED WITH THE COURT BY THE CONSTABLE OR SHERIFF ON OR BEFORE THE DAY SET FOR TRIAL. THE RETURN OF SERVICE MUST BE FILED WITH THE COURT BY THE CONSTABLE OR SHERIFF ON OR BEFORE THE DAY SET FOR TRIAL. THE RETURN OF SERVICE MUST BE FILED WITH THE COURT BY THE CONSTABLE OR SHERIFF ON OR BEFORE THE DAY SET FOR TRIAL.

TRCP Rule 510.4(c)(1)
Alternative Service by Delivery to Premises

- (1) **When Allowed.** The citation may be served by delivery to the premises if:
 - (A) unsuccessful in serving the citation under (b);
 - (B) the petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and

TRCP Rule 510.4(c)(1)

Alternative Service by Delivery to Premises

- (C) the constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.

TRCP Rule 510.4(c)(2)

Alternative Service by Delivery - Authorization

- The judge **must** promptly consider a sworn statement filed under (1)(C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.

TRCP Rule 510.4(c)(3)

Alternative Service by Delivery - Method

- If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at **least 6 days before** the day set for trial:

TRCP Rule 510.4(c)(3)

Alternative Service by Delivery - Method

- (A) deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; **and**
- (B) deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.

TRCP Rule 510.4(4)

Alternative Service by Delivery

•**Notation on Return.** The constable, sheriff, or other person authorized by written court order **must** note on the return of service the date the citation was delivered and the date it was deposited in the mail.

Setting Trial Date- Things to consider

•When setting an EVICTION TRIAL date, remember to consider the following:


- (1) Trial date **must** be NO LESS than 10 days from the file date;
- (2) Trial date **must** be NO MORE than 21 days from the file date;
- (3) Citation **must** be served AT LEAST 6 days prior to trial date

JULY 2015						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4 Independence Day
5	6	7 (Day 0) Case Filed	8 (Day 1)	9 (Day 2)	10 (Day 3)	11 (Day 4)
12 (Day 5)	13 (Day 6)	14 (Day 7)	15 (Day 8)	16 (Day 9)	17 (Day 10)	18 (Day 11) First Day Trial can be set
19 (Day 12)	20 (Day 13)	21 (Day 14)	22 (Day 15)	23 (Day 16)	24 (Day 17)	25 (Day 18)
26 (Day 19)	27 (Day 20)	28 (Day 21) Last Day to Set Trial	29	30	31	

Trial Notice to Plaintiff

- The Rules do not state how notice of a trial date is to be given to Plaintiff, but some suggestions are:
- (1) Give the Plaintiff a copy of the citation which (should) have the trial date;
- (2) Have Plaintiff contact the court to find out the court date;
- (3) Mail, email or fax notice of trial to Plaintiff; or
- (4) Give the Plaintiff written notice of a tentative date upon filing the case. Example:

Eviction Trial Notice Sample


JUSTICE OF THE PEACE - Precinct 6
 121 Main St
 Abilene, Texas 79201
 Judge Du Dhalb 7711 Highway 186, Boxers, Texas 77023 (281) 683-3411

EVICTON TRIAL NOTICE

To: John Doe Plaintiff
 121 Main St
 Abilene, Texas 79201

Re: Case No. 888121, John Doe Plaintiff vs. Jack Dobby and Stone Dobby and all other respondents in the Justice Court Precinct 6, Chambers County, Texas.

Dear Sir Madam:

This is to advise you that the above cited and captioned cause has been **set for trial** on the 11th of October, 2015, at 9:00 a.m. It is **your responsibility** to appear for the **trial** on the date to which you are notified. You are notified and that the court will be held on the above referenced day and time. Your own appearance will result in a judgment of the facts.

Should the Court be unable to verify the defendant, he may request judgment against you, which will require the court to issue a writ of possession and a new trial date.

Your attention to this matter will be appreciated.

JUDGE DU HALB
 Justice of the Peace, Precinct 6
 Chambers County, Texas

By: _____
 Court Clerk
 at home

Eviction Trial

Trial Date, Answer & Default

TRCP Rule 510.6(a)

Trial and Answer

- The defendant **may**, but is not required to, file a written answer on or before the trial date, but
- The defendant **must** appear for trial on the day and time set in the citation.

TRCP Rule 510.6(b)

Default Judgment

- If the defendant **fails to appear** and there is proof of service and the plaintiff's petition is sufficient -- judgment by default **shall** issue.
- If a defendant who *has* answered fails to appear for trial, the court **may** proceed to hear evidence and render judgment accordingly.

TRCP Rule - Default Judgment

- Before the court can grant a default judgment, plaintiff **must** file a Military Status Affidavit.
- If the plaintiff files an affidavit stating defendant is not in military service but fails to “show necessary facts to support the affidavit,” the court **may not** grant a default judgment.

50 u.s.c. App. § 521

TRCP Rule - Default Judgment

- If the defendant is active military, the court **must** appoint an attorney to represent the defendant.
- If the plaintiff is unable to determine if the defendant is an active duty servicemember, the court **may** require the plaintiff to post a bond to protect the defendant in the event it turns out that they are an active duty servicemember.

TRCP Rule 510.6(c)

Notice of Default

- The clerk **must** immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises

TRCP Rule 510.7(a)

Trial

- Docketed and tried as other cases; cannot be held less than 6 days after service (under Rule 510.4)

TRCP Rule 510.7(b)

Jury Trial Demanded

- Any party can make a *written* request for a jury at least **3 days** before the trial date; *must* include the \$22 jury fee or statement of inability to pay.
- If demanded, jury will be impaneled and sworn as in other cases. If no jury demanded, case will be heard by the judge.

TRCP Rule 504.1(c)

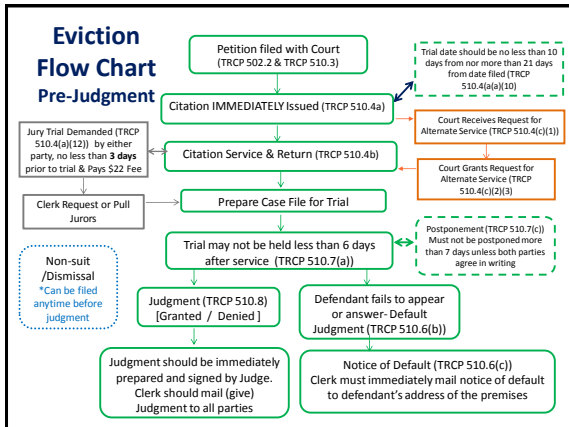
Jury Trial – Withdrawal of Demand

- Withdrawal of Demand -- case remain as a jury trial unless BOTH parties agree to no jury (no refund to anyone)

TRCP Rule 510.7(c)

Trial - Limit on Postponement

- Trial **must not** be continued more than **7 days** unless both parties agree in writing.



Request for Immediate Possession

TRCP Rule 510.5(a)

Request for Immediate Possession - Bond

- When filing the petition, or any time before judgment, the Plaintiff may file a possession bond approved by the judge
- Bond amount - probable amount of costs of suit and damages to the defendant if the suit shouldn't have been filed, and that the plaintiff will pay defendant all costs and damages

TRCP Rule 510.5(b)

Request for Immediate Possession – Notice

- The court **must** notify the defendant that plaintiff filed a bond for possession.
- Notice ***must be served*** in the same manner as service of citation and must tell the defendant if they do not answer or appear for trial, and a default judgment is issued, an officer will place the plaintiff in possession of the property on or after the ***7th day*** after the date defendant is served with the notice.

TRCP Rule 510.5(c)

Request for Immediate Possession – Writ Issuance

- If there is a default judgment for possession rendered and a possession bond has been filed ...a writ of possession ***must issue immediately upon demand and payment of any required fees.***
- The writ ***must not*** be executed before the 7th day after the date defendant is served with notice under (b)

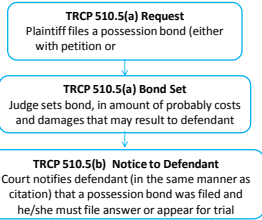
TRCP Rule 510.5(d)

Request for Immediate Possession

- **(d) Effect of Appearance.** If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later.

So if defendant appears, the case proceeds as normal even though the plaintiff filed an Immediate Possession Bond

Immediate Possession Bond Flow Chart



TRCP 510.5(c) Writ Issuance
If a default judgment for possession is rendered and plaintiff filed possession bond, a writ *must* issue immediately upon demand and payment of fees.

TRCP 510.5(d) Appearance
If defendant files an answer or appears at trial, no writ may issue before the 6th day after judgment for possession is signed, or the appeal date, whichever is later

TRCP 510.5(c) Writ Execution
Writ cannot be executed before the 7th day after the date defendant was served notice under TRCP 510.5(b)

This chart should be used along with Eviction Flow Chart

Post Trial

Judgments & Writs

HB 1334 – eff January 1, 2016
Judgment – appeal bond amount

In an eviction suit for nonpayment of rent, the amount of the appeal bond **must** be stated in the court’s judgment.

(The court must take into consideration the money required to be paid into the court registry.)

TRCP RULE 510.8(a)

Judgment

- **Judgment Upon Jury Verdict** – Where a jury has returned a verdict, the judge **may** render judgment on the verdict or, if the verdict is contrary to the law or the evidence, the court can override the jury verdict

TRCP RULE 510.8(b)

Judgment for Plaintiff

- If judgment is in favor of the **plaintiff**, the judge **must** render judgment for possession, costs, delinquent rents as of the date of entry of the judgment, if any, and attorneys fees if recoverable by law.

TRCP RULE 510.8(c)

Judgment for Defendant

- If judgment is in favor of the **defendant**, the judge **must** render judgment for defendant against the plaintiff for costs and attorneys fees if recoverable by law.

TRCP Rule 510.8(d)

Writ of Possession

- Upon demand of plaintiff, and payment of any fees, the judge **must** issue a writ of possession.
- (1) **Time to Issue.** **Must** wait **6 days** after judgment signed or the day after appeal deadline -- whichever is later (except immediate possession)
 - May **NOT** issue more than **60 days** after a judgment is signed; **may** extend to 90 days for good cause

TRCP Rule 510.8(d)

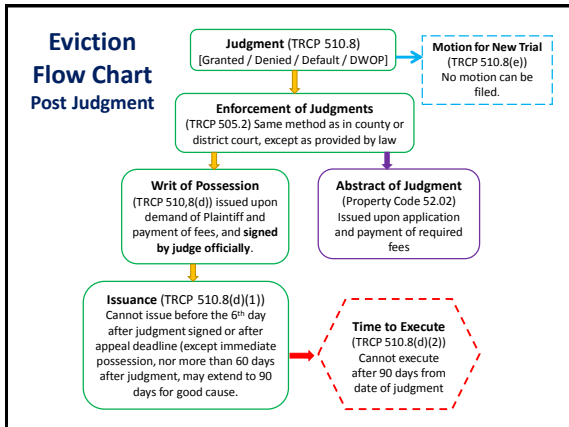
Writ of Possession

- (2) **Time to Execute.** Can not execute after 90 days from date judgment signed
- (3) **Effect of Appeal.** A writ of possession **must not** issue if an appeal is perfected

TRCP Rule 510.8(e)

Motion for New Trial

- NO motion for new trial may be filed.



Post Trial

Appeal

TRCP RULE 510.9(a)

Appeal – How Taken, Time

- A party may appeal a judgment by filing a bond, making a cash deposit, or a statement of inability within 5 days after the judgment is signed.

TRCP RULE 510.9(b)

Appeal – Amount of Security; Terms

- The judge will set the amount of the bond or cash deposit, including items enumerated in Rule 510.11.
- The bond **must** be payable to the other party conditioned on going forward with the appeal.

HB 1334 – eff January 1, 2016
Appeal – suit on nonpayment of rent

Appeal bonds in eviction suits for nonpayment of rent must include the surety’s contact information, including:

- Address
- Phone number
- Email address (if any)

If any contact information changes, the surety **shall** inform the court of the surety’s new contact information.

TRCP RULE 510.9(c)(1)

Appeal – Statement of Inability to Afford Court Costs

- (1) **Filing.** If appellant cannot furnish a bond or pay a cash deposit, may file a sworn statement of inability to afford court costs. Must meet the requirements of Rule 502.3(b)

HB 1334 – eff January 1, 2016
Appeal – suit on nonpayment of rent

Appellee may contest:

- Amount of appeal bond;
- Form of appeal bond; or
- Financial ability of a surety to pay the appeal bond

Contest **must** be in writing, on or before the fifth day the appeal bond is filed.

TRCP

Appeal

If no contest to the bond, and the appeal is perfected, the justice court must transmit the transcript, records, and papers of the case to the clerk of the county court

Appeal

Affidavit of Inability
Contested

TRCP RULE 510.9(c)(2)

Appeal – Statement of Inability to Afford

- (2) **Contest.** Statement may be contested as provided in Rule 502.3(d) **within 5 days** after the opposing party receives notice that the statement was filed

TRCP RULE 510.9(c)(3)

Appeal – Sworn Statement of Inability to Pay

- (3) **Appeal If Contest Sustained.*** Appellant may appeal that decision by filing notice with the justice court within 5 days of that court's **written** order;
- Court **must** forward all related documents to the county court for resolution;
- County court **must** set the matter for hearing within 5 days and hear the contest de novo.

*Sustained means judge agrees with objection.

TRCP RULE 510.9(c)(3)

Appeal – Sworn Statement of Inability to Pay

- If the appeal is granted, must direct the justice court to transmit the transcript, records, and papers of the case to the clerk of the county court

TRCP RULE 510.9(c)(4)

Appeal – Sworn Statement of Inability to Pay

- (4) **If No Appeal or If Appeal Overruled.** If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, **within one business day**, post an appeal bond or make a cash deposit in compliance with this rule

Appeal

Payment of Rent
During Appeal

TRCP Rule 510.9(c)(5)(A)

Appeal – Payment of Rent in Nonpayment Appeals

- **Notice:** Defendant appeals for nonpayment of rent by filing a statement of inability to pay, the justice court **must** provide written notice:
- (i) amount of deposit of rent the defendant **must** pay into the justice court registry
- (ii) payment type: cash, cashier's check, or money order, **and** to whom must be made payable

TRCP Rule 510.9(c)(5)(A)

Appeal – Payment of Rent in Nonpayment Appeals

- (iii) the date which the deposit **must** be paid into the registry (within 5 days of the statement of inability to pay); **and**
- (iv) failure to pay the required amount by the required date may result in a writ of possession without hearing

TRCP Rule 510.9(c)(5)(A)

Appeal – Payment of Rent in Nonpayment Appeals

CASE NO. _____

_____ BY THE JUSTICE COURT

Plaintiff(s) _____

VS. _____ COUNTY, TEXAS

Defendant(s) _____ PRECINCT _____

NOTICE
PAYMENT OF RENT DURING APPEAL
OR EXERCISE BY PLAINTIFF'S REMEDY
(Subject to certain limitations imposed by the Uniform Act)

Pursuant to Section 241.003, Texas Property Code, the court has determined that:

1. The monthly rental amount due is _____ and
2. If applicable, a governmental entity is a portion of the rent in _____ and the defendant's portion is _____.
3. The first payment of rent, during the pendency of this appeal, is to be paid within five (5) days of the date of filing the Plaintiff's Affidavit and shall be paid into the registry of this court and payment shall be in full from all cash, certified cashier's check or money order, payable to _____.
4. Each subsequent payment of rent thereafter shall be paid as a business day, as follows:
 - Paid into the Registry of the Justice Court payable by cash, certified cashier's check or money order, and payable to the order of _____.
 - Paid into the Registry of the County Court payable by cash, certified cashier's check or money order, and payable to the order of _____.
5. Rent, pursuant to §241.003 and §§. Texas Property Code, paid by the tenant to _____ or a governmental entity is applicable to §241.003.
6. Other terms of the lease shall apply.

Failure to pay the required amount into this court's registry within five (5) days of the date of filing the Plaintiff's Affidavit may result in the court issuing a writ of possession without a hearing.

TRCP Rule 510.9(c)(5)(B)

Appeal – Defendant May Remain in Possession

- A defendant that files a statement of inability to afford court costs or an appeal bond can stay in the property, in a nonpayment of rent case, only if:
 - (i) pay the rent amount, set by the court, into the court registry within 5 days

TRCP Rule 510.9(c)(5)(B)

Appeal – Defendant May Remain in Possession

- (ii) pays rent due during the appeal, into county court registry within *5 days of the rental due date under the terms of the rental agreement*
- (iii) Defendant only pays the portion set, if the court determines a government agency is responsible for all or a portion of the rent; either party may contest the rent amount

TRCP Rule 510.9(c)(5)(B)

Appeal – Defendant May Remain in Possession

- (iv) If the defendant fails to pay rent, the plaintiff may file a sworn motion that the defendant is in default in county court. Plaintiff **must** notify defendant of motion and hearing date. If shown to be in default, court must issue a writ of possession.

TRCP Rule 510.9(c)(5)(B)

Appeal – Defendant May Remain in Possession

- (v) Plaintiff may withdraw any or all rent in the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.

- (vi) **All hearings and motions under this subparagraph are entitled to precedence in the county court**

TRCP Rule 510.9(d)

Appeal – Notice to Other Parties Required

- The court must** provide notice to all other parties that a statement of inability to pay was filed no later than the next business day
- Appellant must** serve written notice of an appeal on all other parties using a method approved under Rule 501.4 within 5 days of filing a bond or making a cash deposit

TRCP Rule 510.9(f)

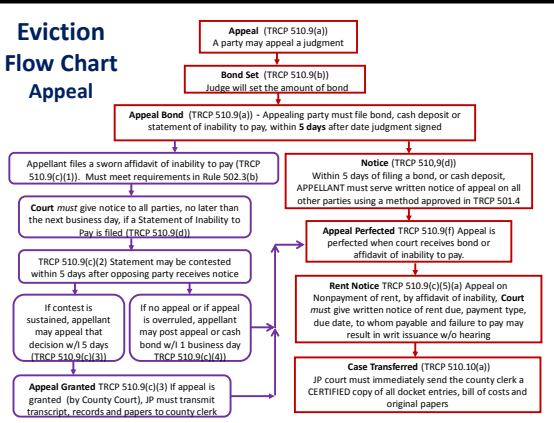
Appeal – Appeal Perfected

- An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed in accordance with this rule

TRCP Rule 510.10(a)

Record on Appeal

- **Preparation and Transmission of Record -** When an appeal has been perfected, the judge **must** stay all further proceedings on the judgment and must immediately send to the clerk of the county court a certified copy of all docket entries, a certified bill of costs, and the original papers in the case along with any money in the court's registry.



Other
TRCP Rules

TRCP Rule 500.4
Representation

- (a)(2) a party *may be* represented by an authorized agent in an eviction case
- (b)(2) a corporation or other entity *may be* represented by a property manager or other authorized agent in an eviction case
- Can always represent themselves or be represented by an attorney

TRCP Rule 500.4
Judge to Develop the Case

- In order to develop the facts of the case, a judge may question a witness or party and may summon any person or party to appear as a witness when the judge considers it necessary to ensure a correct judgment and a speedy disposition.

TRCP Rule 502.4(e)
Fair Trial Venue Change

- File a sworn motion stating cannot get a fair trial
 - Supported by the sworn statements of two other credible persons, and
 - Specifying if the party is requesting a change of location or judge
- Filed no less than 7 days before trial (unless good cause)
- In eviction cases, the only remedy available is a change of judge**
- A party may apply for relief under this rule only one time in any given lawsuit

TRCP Rule 503
Cannot Delay Eviction

- **RULE 503.4(b) Pretrial Conference –**
Eviction Cases - The court must not schedule a pretrial conference in an eviction case if it would delay the trial.
- **RULE 503.5(b) Alternate Dispute Resolution**
Eviction Cases - The court must not order mediation or any other alternative dispute resolution process in an eviction case if it would delay trial.

Terminology

Please refer to the Training website under
"Resources - Handbooks, Guides - JP/Clerk" at:

<http://www.tjctc.org/tjctc-resources/handbooks-deskbooks-guides/jp-court-personnel.html>

- **Abstract of Judgment –** A complete history of a case found in the record (in abbreviated, short form), when filed by the judgment creditor with the county clerk, it creates a judgment lien on the release estate of the defendant in the county where filed.
- **Affidavit of Service –** A sworn statement that a document has been delivered or exhibited to a designated.
- **Answer –** A pleading in a civil matter in which one party (defendant) responds to the claim of another party (plaintiff)

• **Appeal** – A request to remove the case from justice court to county court for the purpose of obtaining a review or new trial.

• **Appellant** – The party initiating the appeal from one jurisdiction to another.

• **Appellee** – The party in a case in which the other party has appealed; against whom the appeal is taken.

• **Cause of Action** – The facts that give a person the right to judicial relief; the basis of a lawsuit.

• **Citation** – An order or summons issued by the court commanding the person named in the order to appear in court on a date named

• **Counterclaim** – A claim presented by a defendant against a plaintiff in the same action

• **Court Costs** – Fees and charges required by law to be paid to the courts, in the amount fixed by law

• **Defendant** – A person who is named in a civil lawsuit and being sued.

• **Default Judgment** – A judgment entered by the court upon the failure of a party to plead or appear at the appointed time.

• **De Novo** – Anew; a second time; appeal from justice court is *de novo*

• **Dismissal** – An order or judgment disposing of a case without holding a trial on the issue.

• **Docket** – A formal record of the courts in which all the acts done in court in the conduct of each case are entered in concise form, from beginning to conclusion.

- **Eviction** – The process of depriving a person possession of land or rental property which the person has held or leased but no longer has the right to possess.
- **Judgment** – The official decision of the court in resolving a dispute between parties. The judgment must be reduced to writing and entered in the court record.
- **Jurisdiction** – The power of the court to hear and decide a case.
- **Lessee** – A person to whom a lease is given.

- **Lessor** – A person who gives a lease.
- **Motion** – An oral or written application for a ruling or order from the court. (Ex: Motion to Dismiss)
- **Non-suit** – A dismissal filed by the party initiating the complaint.
- **Petition** – A written application from the plaintiff to the court asking for the court to exercise its authority in the redress of some wrong, or the granting of some favor, privilege or license.

- **Plaintiff** – A person who complains or sues in a civil lawsuit.
- **Pro Se** – One who does not retain a lawyer but appears in one's own behalf in court.
- **Service** – Delivery of a writ, notice, etc. by an authorized person
- **Style** – The top of the pleading which includes cause number, names of parties, name of court and county.
- **Tenant** – One who has the temporary use and occupation of real property owned by another (landlord) for a fixed term.

- **Transcript** – A copy of the court records in a case.
- **Trial** – Proceedings in open court during which the ultimate issues in a case are determined by a judge or jury.
- **Venue** – The place where a cause of action may be tried.
- **Writ of Possession** – An order commanding the sheriff or constable to enter the land and give possession of it to the person entitled under the judgment.

Helpful Information

Websites

Texas Justice Court Training Center

- <http://www.tjctc.org>

Texas Property Code – Chapter 24

- http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR_24.htm#00

Texas Supreme Court – Rules of Court

- http://www.supreme.courts.state.tx.us/rules/trcp/trcp_part_5.pdf

Texas Property Code
 Chapter 24 – Forcible Entry & Detainer

- Sec. 24.001 - Forcible Entry & Detainer
- Sec. 24.002 - Forcible Entry
- Sec. 24.004 - Jurisdiction
- Sec. 24.005 - Notice to Vacate Prior to Filing Suit
- Sec. 24.0051 - Procedures to Evict & Collect Unpaid Rent
 - Sec. 24.00511 – Appeal Bond for Certain Eviction Suits
 - Sec. 24.00512 – Contest of Certain Appeal Bonds
 - Sec. 24.0053 – Payment of Rent During Appeal

Responder Q. 1

A landlord files an eviction suit. The defendant fails to appear for trial. You review the petition & notice that it doesn't contain any "description of when and how to vacate was delivered" as required by Rule 510.3(a)(3). You should:

1. Grant a judgment for possession since the defendant did not appear.
2. Grant a judgment for the defendant since the plaintiff has failed to establish an essential element of his case.
3. Grant a judgment for the defendant unless the landlord testifies under oath concerning when and how the notice to vacate was delivered.

Responder Q. 2

Plaintiff files an eviction suit on Monday, Nov. 23, 2015. The court sets a trial date for Friday, Dec. 4 (more than 10 days but less than 21 days after filing). But due to the Thanksgiving holidays, the tenant is not served with the Citation until Monday, Nov. 30. On Friday, Dec. 4, the defendant does not appear for trial. The Court should:

1. Enter a default judgment in favor of the landlord.
2. Re-set the trial for the following week and notify the parties of the new trial date.

Responder Q. 3

Plaintiff files an eviction suit on Monday, Nov. 23, 2015. Trial is set for Friday, Dec. 4. Defendant doesn't appear & the court enters a default judgment. On Monday, Dec. 7, the defendant files a motion to set aside the default judgment claiming that he did not get served until Nov. 30 and the trial was held less than six days after service. The court should:

1. Grant the motion to set aside the default judgment and re-set the trial date.
2. Deny the motion because a motion to set aside a default judgment is not available in an eviction case.

Responder Q. 4

The owner of an apartment that is rented to a tenant defaults on his note to the bank. The trustee on the deed of trust files an eviction suit against the owner "and all occupants." The owner appears for trial and says he still owns the property. The trustee says the property is "in foreclosure." The court should:

1. Dismiss the case for lack of jurisdiction.
2. Abate the case until the foreclosure proceedings are over.
3. Grant a judgment for the defendant.
4. Grant a judgment for possession to the plaintiff.

Responder Q. 5

Trial is set in an eviction suit on a Thursday. On the Monday before trial the defendant files a jury demand. The jury demand is....

1. Timely since it was filed three days before trial.
2. Not timely since the court closes at 4:30 p.m.; the defendant therefore had to file the jury demand no later than the preceding Friday.

Responder Q. 6

The Court signs a judgment for possession on Tuesday, Dec. 1, 2015. The court closes at 4:30 p.m. every day. The tenant must file an appeal no later than:

1. Friday, Dec. 4
2. Monday, Dec. 5
3. Tuesday, Dec. 6

Responder Q. 7

The Court signs a judgment for possession on Tuesday, Dec. 1, 2015. The court closes at 4:30 p.m. every day. The first day a writ of possession may be issued is:

1. Dec. 2
2. Monday, Dec. 7 (sixth day after the judgment was signed)
3. Tuesday, Dec. 8
4. Wednesday, Dec. 9
5. Whenever the plaintiff asks for one.

Responder Q. 8

The Court signs a judgment for possession on Tuesday, Dec. 1, 2015. The court closes at 4:30 p.m. every day. The defendant puts an appeal bond in the mail to the court on Tuesday, Dec. 6, and calls the clerk & tells her the appeal bond is on its way. At 9:00 a.m. on Wednesday, Dec. 7, the plaintiff asks for a writ of possession. The court should:

1. Not issue the writ of possession since the defendant's appeal bond is timely under the "mailbox" rule.
2. Wait to see if the appeal bond arrives that day in the mail since the plaintiff called the clerk.
3. Issue the writ of possession since the court did not receive the appeal bond on the last day for filing.

Responder Q. 9

The Court signs a judgment for possession on Tuesday, Dec. 1, 2015. On Monday, Dec. 5, the plaintiff asks the judge how much the bond will be to appeal. The judge is out of the office attending a TJCTC training program until Wednesday afternoon. On Wednesday morning the plaintiff asks for a writ of possession. The Court should:

1. Issue the writ of possession since the time for appeal has passed.
2. Hold off on issuing the writ of possession so the judge has time to set the amount of the appeal bond and the defendant has a chance to file it.

Responder Q. 10

Plaintiff files an eviction suit and at the time the suit is filed he also files an immediate possession bond which the court approves. Defendant is served with the citation and notice of the possession bond on Monday, Nov. 30, 2015. The case is set for trial on Monday, Dec. 7. Defendant does not appear and a default judgment is signed the same day. The first day a writ of possession may be executed is:

1. Monday, Dec. 7
2. Tuesday, Dec. 8
3. Monday, Dec. 14

Responder Q. 11

Plaintiff files an eviction suit & at the time the suit is filed he also files an immediate possession bond which the court approves. Defendant is served with the citation & notice of the possession bond on Monday, Nov. 30, 2015. The case is set for trial on Monday, Dec. 7. Defendant appears at trial but the court grants a judgment for possession to the plaintiff & signs the judgment the same day. The court closes at 4:30 p.m. every day. The first day a writ of possession may be issued is:

1. Monday, Dec. 7
2. Tuesday, Dec. 15
3. Wednesday, Dec. 16

Responder Q. 12

The Court enters a judgment for possession against a tenant. The next day the tenant files a statement of inability to afford court costs in order to appeal the judgment. The landlord contests the tenant's statement of inability to afford court costs and the court agrees with the landlord. At that point the tenant may:

1. Appeal the decision on inability to pay by filing a notice with the justice court within five days of the court's order.
2. Post an appeal bond or make a cash deposit within one day after the court's order.
3. Either A or B.
4. Move out.

Responder Q. 13

A landlord files an eviction suit and includes a claim for nonpayment of rent for two months, which he says is \$600 per month or \$1200. The tenant files a counterclaim alleging that he is entitled to a rent abatement of \$100 per month because of insect infestation. The court should hear and decide:

1. Only the eviction suit since the only issue before the court is the right to possession.
2. The eviction suit and the landlord's claim for rent but not the tenant's counterclaim.
3. The eviction suit and the landlord's claim for rent and the court may consider whether the tenant is entitled to an offset of rent in deciding how much rent is due.

Responder Q. 14

A landlord files an eviction suit for nonpayment of rent for one month at \$600. The tenant appears and says he paid the rent and produces a copy of a check for \$600 cashed by the landlord. The landlord says the tenant owed \$20 in late fees and he applied the late fees first so the tenant's rent was short by \$20 and he is entitled to evict the tenant for nonpayment. Who wins?

1. The tenant because he paid his rent; the landlord can file a small claims suit for \$20.
2. The landlord because he was entitled to count the late fees toward the rent and the tenant did not pay the rent in full.
3. It depends on what the terms of the lease are.

Responder Q. 15

A landlord files an eviction suit for nonpayment of rent. The court signs a judgment for possession. The defendant files an appeal by filing a statement of inability to afford court costs. The court gives the defendant a notice stating that he must make an initial deposit of one month's rent of \$600 into the court's registry within three days. The defendant fails to do so. The landlord is entitled to a writ of possession:

1. On the sixth day after the tenant filed his appeal if the rent has still not been paid by that time.
2. After the court holds a show cause hearing to determine why the tenant has not paid the rent.
3. Immediately and without a hearing.
